



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/628,644

07/28/2003

Gregory A. Ehlers

68,180-005

4901

27305

7590

11/01/2006

HOWARD & HOWARD ATTORNEYS, P.C.  
THE PINEHURST OFFICE CENTER, SUITE #101  
39400 WOODWARD AVENUE  
BLOOMFIELD HILLS, MI 48304-5151

EXAMINER

BORISSOV, IGOR N

ART UNIT

PAPER NUMBER

3628

DATE MAILED: 11/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/628,644

Applicant(s)

EHLERS ET AL.

Examiner

Igor Borissov

Art Unit

3628

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-63 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 8-30, 33-35 and 40-61 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 4-6, 7, 31, 32, 36-39, 62, 63 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

Applicant's election without traverse of Claims 1-3, 8-30, 33-35 and 40-61 filed on 09/11/2006 is acknowledged. Accordingly, claims 4-7, 31, 32, 36-39, 62 and 63 have been withdrawn from consideration.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1-3, 8-30, 33-35 and 41-61 are rejected under 35 U.S.C. 102(b) as being anticipated by Ehlers et al. (US 5,572,438).**

Claims 1 and 33. Ehlers et al. (Ehlers) teaches a method and apparatus for providing at least one program to a customer of a utility of a commodity, the program aimed at managing demand for the commodity, the utility delivering the commodity to at least one customer site, the customer site having a plurality of devices which use the commodity, including the steps of:

- defining a program having a subset of the plurality of devices for which usage of the commodity may be managed by activating the program (C. 9, L. 9-10, 51-53);
- allowing the customer to subscribe to the program (C. 32, L. 57 – C. 33, L. 3);
- delivering the commodity to the subset of devices (C. 3, L. 57-65);
- measuring the instantaneous rate at which the commodity is being delivered to the subset of the devices (C. 15, L. 5-8);
- sending the instantaneous rate for each device within the subset to the utility (C. 15, L. 5-8).

Claims 2 and 34. Said method, including the steps of:  
activating the program (C. 32, L. 57 – C. 33, L. 3);  
subsequently measuring at least one of a rate and a change in a rate at which  
the commodity is being delivered to the subset of the devices (C. 15, L. 5-8).

Claims 3 and 35. Said method, including the step of:  
determining an actual change in a rate of consumption of the commodity and  
recording the rate of change in a memory (C. 15, L. 5-8).

Claim 8. Said method, including the step of: providing a user interface for  
interaction with the customer (C. 9, L. 47 – C. 10, L. 8).

Claims 10 and 41. Said method, wherein each device has an associated node,  
and the method includes the step of allowing the customer to control one or more of the  
devices through the associated node (C. 10, L. 28-31).

Claims 11 and 42. Said method, wherein the utility delivers the commodity to a  
plurality of customer sites, each customer site having a plurality of devices and the step  
of defining the program includes the step of including within the program all devices of a  
similar type at each customer site (C. 12, L. 2-61).

Claims 12 and 43. Said method, wherein the utility delivers the commodity to a  
plurality of customer sites, each customer site having a plurality of devices and the step  
of defining at least one program includes the step of defining a plurality of programs,  
each program having a respective subset of the devices (C. 12, L. 2-61).

Claims 13 and 44. Said method, including the step of: activating the program;  
and,  
allowing the customer to cancel the program when activated (C. 32, L. 57 – C.  
33, L. 3).

Claims 14-17 and 45-48. Said method, including the step of: setting a budget  
goal; and, monitoring an aspect of usage of the commodity related to the budget goal  
(C. 14, L. 60 – C. 15, L. 49).

Claims 18,19, 49 and 50. See reasoning applied to claims 1 and 30.

Claims 20-22 and 51-53. Said method, wherein the commodity is electrical  
power, water and gas.

Claims 23-30 and 54-61. See reasoning applied to claims 1 and 30.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 9 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ehlers et al. in view of Official Notice.**

Claims 9 and 40. Ehlers teaches all the limitations of claims 9 and 40, including that said second microcomputer, which is installed at the customer premises, is provided with an appropriate network/bus interface (C. 9, L. 56-57), except specifically teaching that said interface includes a web browser. Official notice is taken that it is old and well known to use a browser to access the Internet, which is largest existing network. Therefore, It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Ehlers to include that said interface includes a web browser, because it would advantageously allow to save funds by employing the existing network rather than build a dedicated network.

***Conclusion***

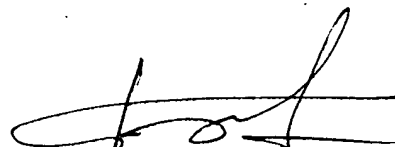
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure (see form PTO-892).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Igor Borissov whose telephone number is 571-272-6801. If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, John W. Hayes can be reached on 571-272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

IB  
10/27/2006



IGOR N. BORISSOV  
PRIMARY EXAMINER